Office Memorandum • UNITED STATES GOVERNMENT

TO : The General Counsel DATE: 18 November 1952

FROM : [redacted] 25X1A9A

SUBJECT: Proposed Legislation Permitting the General Counsel of CIA to Appear in Court under Specified Conditions.

1. At the outset, it is recognized that it is and has been the intent of Congress that the Attorney General (Department of Justice) will be the "lawyer" for other Government departments with respect to representing the Government in legal actions. See 28 USCA 507, re powers and duties of District Attorneys and the Attorney General. See also 5 USCA 49 and 314, re prohibition on hiring private counsel.

2. The relatively few exceptions which have been made have applied not to the executive departments as such but to specified agencies such as the FCC and the NLRB and their respective rights to appear in the court on their own behalf. For NLRB see 29 USCA 151 et seq. and for FCC, 47 USCA 401, 402.

3. In seeking the statutory power to appear in a Federal Court under the very narrow limitations set forth in the proposed legislation, CIA seeks not in any respect to encroach on the power of the Department of Justice to appear generally in Federal Courts as the "lawyer" for the Federal Government in accordance with the intent of Congress.

a. An example of this is a case (Zavodny) in which the Strategic Services Unit, a lineal ancestor of CIA, is being sued in the Court of Claims for loss of certain material loaned to SSU. This suit is being defended by the Claims Division of the Department of Justice with the full cooperation of CIA as represented by the undersigned. The aid of the Department of Justice would be sought in any other suit against CIA. Also the CIA has sought and received the willing cooperation of the Department of Justice in such matters as acquisition of real estate.

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a. A striking example of what can happen occurred in the recent case in a District Court in Washington State involving the prosecution by the Department of Justice of Harry Jarvinen under an indictment comprising two counts involving the alleged giving of false information to two Government agencies, CIA and the FBI (Department of Justice). Two CIA agents were subpoenaed by the Department of Justice and when put on the witness stand, claimed privilege. The Department of Justice, which had before the trial, been advised of the CIA's position with respect to protection of sources of information, nevertheless chose to subpoena the CIA agents. When the CIA agents claimed privilege the Department of Justice assumed a neutral position. As the Government "lawyer" the Department of Justice normally would be expected to appear without hesitation on behalf of the other Government agency, the CIA. As it was, the presiding judge permitted the General Counsel of CIA to make a statement on behalf of the CIA agents and the General Counsel was forced in the absence of support of his "to be expected counsel", the Department of Justice, to hire private local counsel.

5. It should be pointed out that the hiring of such private local counsel has legislative precedent, being specifically provided for by the Congress as to FCC (47 USCA 154(f)(1)) and the Foreign Service under Section 1031 of the Foreign Service Act of 1946. The latter provides:

"SEC. 1031. The Secretary may without regard to sections 189 and 365 of the Revised Statutes (5 U.S.C. 49 and 314), authorize a principal officer to procure legal services whenever such services are required for the protection of the interests of the Government or to enable an officer or employee of the Service to carry on his work efficiently."

It is submitted that in the wide diversified activities of CIA this authority is at least as necessary as that given to the State Department.

CONCLUSION

In summary, it may be stated that with regard to the normal "housekeeping" functions the CIA has not only no objection to, but welcomes representation in the courts by the Department of Justice. However, with respect to the well-defined limits as set forth by Congress in specific legislation with respect to the duties of the DCI to protect sources of intelligence, it is clear that the DCI should be given the statutory right to be represented by his own private counsel. This is

particularly true when the alternative would be, as in the Jarvinen Case, representation by another Government department (Department of Justice) which is also by legislation given certain well-defined duties in the national intelligence field, i.e., internal security. It is submitted that the Department of Justice is not in a proper position to pass judgment on the position of CIA with respect to its own peculiar statutory responsibilities as to security. To permit the Department of Justice while being charged with intelligence duties which might, as in the Jarvinen Case, appear at cross purposes with CIA, and at the same time to be charged with protecting CIA's interests is contrary to any accepted theory or practice regarding the necessity for impartiality or lack of dual interest with respect to any lawyer in the representation of any client.

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